

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SUSAN MACDONALD,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY, a foreign
insurance company, et al.,

Defendants.

C09-829Z

ORDER

THIS MATTER comes before the Court on plaintiff's motion for prejudgment interest, attorney fees, and costs, docket no. 14. Having considered all papers filed in support of and in opposition to plaintiff's motion, the Court enters the following Order.

BACKGROUND

Plaintiff Susan MacDonald brought this action under the Employee Retirement Income Security Act of 1974 ("ERISA"). Plaintiff was employed by Pacific Northwest Title of Snohomish County, Inc., a company affiliated with defendant Pacific Northwest Title Holding Company. She was insured under a long-term disability policy issued by defendant Jefferson Pilot Financial Insurance Company, which subsequently merged with another

1 company and became defendant The Lincoln National Life Insurance Company (“Lincoln
2 National”).

3 Prior to the commencement of this litigation, Lincoln National paid plaintiff
4 \$45,996.36 in disability benefits for the period from December 20, 2007, through December
5 20, 2008. After this case had been pending for approximately three months, Lincoln
6 National paid plaintiff \$41,335.25, representing unpaid benefits, with interest, from
7 December 20, 2008, to October 20, 2009, and it placed plaintiff “back on claim.” Exh. D. to
8 Laurence Decl. (docket no. 15).

9 DISCUSSION

10 A. Request for Prejudgment Interest

11 Plaintiff now seeks prejudgment interest on the back benefits paid by Lincoln
12 National before this action was filed. Plaintiff, however, cites no Ninth Circuit authority that
13 authorizes an award of interest on benefits paid to an ERISA plaintiff prior to litigation. The
14 Second Circuit has awarded prejudgment interest when the delay in paying benefits was
15 unjust or unreasonable. See Dunnigan v. Metropolitan Life Ins., 277 F.3d 223, 230-31 (2d
16 Cir. 2002) (delay of nearly five years). In this case, however, the Court concludes that the
17 delay involved was not unreasonable and that prejudgment interest on the 2008 benefits,
18 which were paid in January 2009, is not warranted.

19 B. Request for Attorney Fees and Costs

20 An ERISA plan participant who prevails in a suit to enforce rights under the plan may
21 recover attorney fees “unless special circumstances would render such an award unjust.” See
22 Hensley v. Eckerhart, 461 U.S. 424, 429 (1983); see also 29 U.S.C. § 1132(g)(1). To obtain
23 attorney fees, the ERISA plan participant must show that (i) he or she is entitled to attorney
24 fees under the five factors articulated in Hummel v. S.E. Rykoff & Co., 634 F.2d 446 (9th
25 Cir. 1980); and (ii) the fees are reasonable as evaluated under the hybrid lodestar/multiplier
26 test, see Van Gerwen v. Guarantee Mut. Life. Co., 214 F.3d 1041, 1045 (9th Cir. 2000).

1 1. Entitlement to Attorney Fees

2 In opposing plaintiff's request for attorney fees, Lincoln National focuses primarily on
3 the first Hummel factor, namely "the degree of the opposing parties' culpability or bad faith."
4 Hummel, 634 F.2d at 453. A finding of bad faith, however, is not required. Smith v.
5 CMTA-IAM Pension Trust, 746 F.2d 587, 590 (9th Cir. 1984) ("Although bad faith is a
6 factor that would always justify an award, it is not required."). The remaining Hummel
7 factors ordinarily lead to the conclusion that a prevailing plan participant should recover
8 attorney fees from an ERISA defendant. See id. This case is no different. Plaintiff received
9 by settlement a majority of the relief she sought to obtain by bringing suit. Plaintiff is
10 therefore entitled to reasonable attorney fees. See id. at 591 ("By way of settlement, Smith
11 received a portion of what he brought suit to recover, and so crossed the 'statutory threshold'
12 entitling him to recover fees from the defendant.").

13 2. Reasonableness of Attorney Fees

14 Plaintiff seeks fees for roughly 150 hours of attorney time at a rate of \$400 per hour.
15 The Court agrees with defendants that both the hours and the rate claimed are excessive. The
16 Court finds that 105 attorney hours and 4 paralegal hours were reasonably expended during
17 this litigation. This calculation reflects the discounting of legal research time, as suggested
18 by defendants, and takes into account an apparently mistaken 2009 entry (for 4.5 hours) in
19 counsel's June 2010 attorney time statement.

20 The Court further concludes that the appropriate rates are \$300 per hour of attorney
21 time and \$125 per hour of paralegal time. These rates are reasonable and commensurate with
22 the amount recently awarded to a similarly situated Seattle ERISA practitioner in Johnson v.
23 Georgia-Pacific Corp., 2009 WL 3190343 (W.D. Wash.). Based on the hours and rates set
24 forth above, the lodestar amount is \$32,000. In light of the factors for determining whether a
25 multiplier is appropriate, see Van Gerwen, 214 F.3d at 1045 n.2 (citing Hensley, 461 U.S. at
26 430 n.3), the Court concludes that the lodestar amount is appropriate. Plaintiff asserts that

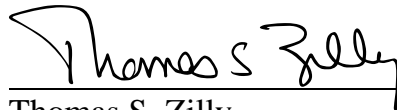
1 this case was undesirable due to the complexity of ERISA cases and the difficulties of proof
2 associated with plaintiff's diagnosis of fibromyalgia. Plaintiff, however, does not
3 demonstrate that the lodestar amount, when compared to awards in other similar, successful
4 ERISA cases, is unreasonably low. The Court therefore declines to employ a multiplier and
5 awards attorney fees in the amount of \$32,000.

6 **CONCLUSION**

7 The Court GRANTS IN PART and DENIES IN PART plaintiff's motion, docket
8 no. 14. Prejudgment interest as to benefits paid prior to litigation is DENIED. Attorney fees
9 in the amount of \$32,000 are AWARDED. Costs in the undisputed¹ amount of \$894.05 are
10 also AWARDED. The Clerk is DIRECTED to enter judgment consistent with this Order, to
11 CLOSE this case, and to send copies of this Order to all counsel of record.

12 IT IS SO ORDERED.

13 DATED this 23rd day of July, 2010.

14
15 

16 Thomas S. Zilly
17 United States District Judge
18
19
20
21
22
23
24

25 _____
26 ¹Defendant did not dispute the amount of requested costs which were \$760 at the time of defendant's
response. Plaintiff claims an additional \$134.05 in costs in reply. Thus, the total costs claimed by
plaintiff are \$894.05.